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Attorney for Defendant, APM Investments,
LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Rafael Arroyo, Jr.,

CASE NO. 2:17-cv-03922-AB-FFM

Plaintiff,

DEFENDANT APM INVESTMENTS,
LLC'S OBJECTION TO THE SUMMARY
JUDGMENT MOTION AND
DECLARATION OF LARA SHAPIRO
[Rule 56(d); L.R. 6-1, 7-3, 7-9]

**APM Investments, LLC, a
California Limited Liability
Company; Jintana Noochla, and
Does 1-10**

Motion Service Date: September 14, 2018
Hearing Date Noticed: September 19, 2018

Defendants.

OBJECTION TO THE SUMMARY JUDGMENT MOTION FILED BY PLAINTIFF

PURSUANT TO RULE 56(d) of the Federal Rules of Civil Procedure, Defendant APM INVESTMENTS, LLC, through its undersigned counsel of record, objects to and opposes the motion for summary judgment filed by Plaintiff Rafael Arroyo, Jr. as set forth herein:

(1) Insufficient Notice and No Opportunity to Oppose: The motion for summary judgment filed as document number 37 in this action [was filed and electronically served on September 14,

2018 at 4:23 PM] is set for hearing pursuant to the electronic notice, on September 19, 2018, providing less than five days notice to parties to oppose prior to the September 19, 2018 hearing date;

(2) Facts Made Unavailable to Non-movant: The motion should be denied pursuant to Fed. Rules of Civ. Proc. Rule 56(d), which provides:

When Facts Are Unavailable to the Non-movant. If a non-movant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order.

(3) Motion Violates Notice Requirement of Local Rules: The motion violates Local Rule 6-1, by failing to provide twenty-eight days notice of motion is filed and served electronically, or thirty-one days before the hearing date, if served by mail.

(4) Failure to Meet and Confer: The motion violates Local Rule 7-3, in failing to comply with the meet and confer requirements of counsels contemplating a motion. No meet and confer between counsel was conducted prior to the filing of this motion.

(5) Motion Violates Minimum Time Provided to Non-movant for Filing Opposition: The motion which provides for less than five days of notice prior to hearing, prevents non-movant from complying with Local Rule 7-9 which requires an opposition to be filed no less than ten days after service of the motion.

The aforementioned objections are supported by the declaration of Lara Shapiro attached to and incorporated to this objection document.

Dated: September 17, 2018

LARA SHAPIRO

By: /s/ Lara Shapiro
Lara Shapiro, Attorney for Al

1
2 **DECLARATION OF LARA SHAPIRO**
3

4 I, LARA SHAPIRO, declare as follows:
5
6

- 1 1. I am familiar with the facts contained herein and if called upon to testify I could and
2 would competently testify thereto.
3
4 2. I am counsel of record for Defendant APM INVESTMENTS, LLC in this action.
5
6 3. The motion for summary judgment [filed as document 37 in this action] was filed and
7 electronically served on September 14, 2018, at 4:23 PM and per the electronic notice is
8 set for hearing on September 19, 2018, providing less than five days notice to parties to
9 oppose the hearing. Because the document was served at the end of the day on Friday, the
10 motion has not been fully reviewed or the electronic notice, until the date of this objection
11 after I had returned from court in downtown Los Angeles.
12
13 4. There is insufficient time provided by the motion to investigate the facts set forth in the
14 evidentiary declarations of the moving papers, specifically the expert witness declaration
15 of Janis Kent [Doc. 37-11], and Declaration of Evens Louis [Doc. 37-9].
16
17 5. There is insufficient time to review the authorities cited in support of the motion, and
18 insufficient time to identify counter-authorities for opposition.
19
20 6. There was no meet and confer between counsel as required by Local Rule prior to filing
21 and service of the motion, and I was unaware of Plaintiff's intent to file this motion.
22
23 7. I did contact Plaintiff's counsel to request early exchange of expert witness reports or a
24 stipulation to permit the filing of an MSJ after the exchange of expert witness reports, I
25 made the request for the first time via e-mail July 17, 2018. A true and correct copy of the
26 July 17, 2018 e-mail is attached hereto as Exhibit "A."
27
28

8. Having heard nothing in response to my July 17, 2018 e-mail, I sent another e-mail on August 14, 2018, and followed up on August 16, 2018. A true and correct copy of this e-mail thread is attached hereto as Exhibit “B.”

9. On August 24, 2018 I spoke with Elliott Montgomery about the dates of the expert witness disclosure and MSJ dates. I wished to have the expert witness report in time so that I might file an MSJ and was contemplating filing a MSJ. Mr. Montgomery said that the expert report had items not included in the Complaint and that Plaintiff's time to amend the Complaint had passed and they would not be seeking to add these claims. I suggested a Stipulation to extend the deadlines for both parties. Mr. Montgomery said perhaps we might file a Stipulation as contemplated by Judge Birotte, Jr. to extend the deadline for filing a MSJ, but that his colleague Sara would be the person with whom I would need to discuss this issue. Mr. Montgomery did mention to me that we would have to meet and confer prior to filing any motion for summary judgment and therefore agreed that the expert reports should be exchanged in time for that meet and confer, which would have to be done by September 7, 2018. A true and correct copy of this e-mail is attached hereto as Exhibit "C."

10. On Tuesday September 4, 2018 I had a telephone call with Sara Gunderson and she declined to enter into a Stipulation to extend the deadline for filing MSJ but agreed to send me the expert report early so that no continuance of dates would be necessary. However, she did not send me the expert report early. The deadline for expert witness disclosure was September 7, 2018. The deadline for filing MSJ was September 14, 2018 and the expert report was provided to me on September 7, 2018. A true and correct copy of this e-mail thread is attached hereto as Exhibit “D.”

1 11. At no point during my telephone call with Sara Gunderson did she indicate that Plaintiff
2 was contemplating filing a motion for summary judgment. If I had been told that Plaintiff
3 was contemplating filing the instant motion for summary judgment, I would have insisted
4 on early disclosure of the expert report, or I would have filed a motion to extend the
5 deadline for filing a motion for summary judgment. Having heard nothing at all from
6 Plaintiff's counsel about filing a motion for summary judgment, I did not file anything to
7 extend my client's time to file a motion for summary judgment. I relied on Mr.
8 Montgomery's recitation of the rule regarding meet and confer prior to motion for
9 summary judgment as an admission of knowledge of the requirement of the meet and
10 confer and because no such meet and confer was had by the time of the expert witness
11 disclosure, and the expert witness disclosure was not early, I did not pursue any extension
12 of time as I determined I would not file a motion for summary judgment.
13
14

15 12. Any opposition filed would be less than the 10 days provided to non-movant parties to file
16 and serve papers in opposition and deprives opponent of opportunity to oppose.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 17th day of September 2018.

/s/ Lara Shapiro

Lara Shapiro SBN 227194

EXHIBIT “A”

EXHIBIT “A”



Lara Shapiro <shapiro.lara@gmail.com>

Arroyo v APM and Langer v TC Investment

1 message

Lara Shapiro <shapiro.lara@gmail.com>

Tue, Jul 17, 2018 at 11:40 AM

To: Wesley Cwiklo <wesleyc@potterhandy.com>, Phyl Grace <phylg@potterhandy.com>, Tanpreet Pannu <tanpreetp@potterhandy.com>

Dear Counsel,

Please send me copies of the reports made by Janis Kent on June 6 and 7th respectively in cases Arroyo v APM and Langer v TC.

Thank you.

Lara Shapiro

--

Lara Shapiro, Attorney At Law
4344 Promenade # 207
Marina del Rey, CA 90292
Tel: (310) 577-0870

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EXHIBIT “B”

EXHIBIT “B”



Lara Shapiro <shapiro.lara@gmail.com>

Re: Arroyo v. APM

1 message

Lara Shapiro <shapiro.lara@gmail.com>

Thu, Aug 16, 2018 at 6:35 PM

To: Phyl Grace <phylg@potterhandy.com>

Cc: Wesley Cwiklo <wesleyc@potterhandy.com>, Tanpreet Pannu <tanpreetp@potterhandy.com>, Elliott Montgomery <elliottm@potterhandy.com>

I have not heard from Elliott, and if I don't have something from him tomorrow I will send formal requests.

On Tue, Aug 14, 2018 at 9:51 AM, Phyl Grace <phylg@potterhandy.com> wrote:

Wes and Tanpreet are not attorneys. I am directing your email to Elliott Montgomery who can work with you on this issue.

From: Lara Shapiro [mailto:shapiro.lara@gmail.com]
Sent: Tuesday, August 14, 2018 9:41 AM
To: Wesley Cwiklo ; Phyl Grace ; Tanpreet Pannu
Subject: Arroyo v. APM

Wesley, Phyl and Tanpreet,

Despite your ongoing duty to provide evidence, you have ignored my request for the reports by Janis Kent.

I will propound formal discovery if you will insist on that formality.

Please advise today if you will voluntarily comply with your ongoing duties to supplement discovery responses or if you will require my sending additional formal discovery.

Sincerely,

Lara Shapiro

--

Lara Shapiro, Attorney At Law
4344 Promenade # 207
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Tel: (310) 577-0870

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--
Lara Shapiro, Attorney At Law
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EXHIBIT "C"

EXHIBIT "C"



Lara Shapiro <shapiro.lara@gmail.com>

Re: Arroyo v. APM

1 message

Lara Shapiro <shapiro.lara@gmail.com>

Fri, Sep 7, 2018 at 8:40 AM

To: Elliott Montgomery <elliottm@potterhandy.com>
Cc: Wesley Cwiklo <wesleyc@potterhandy.com>, Tanpreet Pannu <tanpreetp@potterhandy.com>, Jennifer McAllister <jenniferm@potterhandy.com>, Desiree Mercader <desireem@potterhandy.com>, sarag@potterhandy.com

Received, thank you. Lara

On Thu, Sep 6, 2018 at 5:40 PM Elliott Montgomery <elliottm@potterhandy.com> wrote:

Ms. Shapiro,

I'm writing to follow up on your discussion with my colleague Ms. Gunderson.

Please find attached Plaintiff's expert's report. Let me know if you have any difficulty opening the file. The same will be mailed, along with Ms. Kent's CV and Rate Sheet tomorrow.

Thanks,

Elliott Montgomery

Attorney

ElliottM@PotterHandy.com

Ph: (858) 375-7385

Fx: (888) 422-5191

POTTER HANDY, LLP

Mailing Address:**P.O. Box 262490****San Diego, CA 92196-2490****Delivery Address:**

9845 Erma Road Suite 300

San Diego, CA 92131



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From: Lara Shapiro [mailto:shapiro.lara@gmail.com]
Sent: Friday, August 31, 2018 9:16 AM
To: Elliott Montgomery

Cc: Wesley Cwiklo ; Tanpreet Pannu ; Jennifer McAllister ; Desiree Mercader
Subject: Re: Arroyo v. APM

Thanks Elliott,

Sorry I was confused, yes, I will look for a communication from Sara maybe Tuesday?

Thank you and enjoy the holiday weekend.

Lara

On Thu, Aug 30, 2018 at 10:22 PM Elliott Montgomery <elliottm@potterhandy.com> wrote:

Ms. Shapiro,

I apologize for any confusion ? I'd intended for my colleague Sara Gunderson to speak with you regarding continuing the MSJ date as it was her schedule that would be impacted.

I'll let her know again that you'd like to meet and confer, and I've CC'd her on this email as well.

Thanks,

Elliott Montgomery
 Attorney
elliottM@PotterHandy.com

Ph: (858) 375-7385

Fx: (888) 422-5191

POTTER HANDY, LLP

Mailing Address:

P.O. Box 262490

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From: Lara Shapiro [mailto:shapiro.lara@gmail.com]

Sent: Thursday, August 30, 2018 5:20 PM

To: Elliott Montgomery <elliottm@potterhandy.com>

Cc: Wesley Cwiklo <wesleyc@potterhandy.com>; Tanpreet Pannu <tanpreetp@potterhandy.com>; Jennifer McAllister <jenniferm@potterhandy.com>; Desiree Mercader <desireem@potterhandy.com>

Subject: Re: Arroyo v. APM

Elliott,

After our conversation last week, you were going to have Jennifer get back to me re the dates for expert witness exchange and MSJ....but I haven't heard anything from You or Jennifer.

Please reply or call me tomorrow.

Otherwise I'll have to make a motion.

Thanks,

Lara

On Mon, Aug 20, 2018, 1:46 PM Lara Shapiro <shapiro.lara@gmail.com> wrote:

Perfect. Thank you.

On Mon, Aug 20, 2018 at 1:42 PM, Elliott Montgomery <elliottm@potterhandy.com> wrote:

Ms. Shapiro,

How about this coming Friday at 10:30am?

Thanks,

Elliott Montgomery

Attorney

ElliottM@PotterHandy.com

Ph: (858) 375-7385

Fx: (888) 422-5191

POTTER HANDY, LLP

Mailing Address:

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penalties imposed under the Internal Revenue
Code or, (ii) to promote, market or recommend
to another party any transaction or matter
addressed herein.

From: Lara Shapiro [mailto:shapiro.lara@gmail.com]
Sent: Monday, August 20, 2018 11:25 AM
To: Elliott Montgomery <elliottm@potterhandy.com>
Cc: Wesley Cwiklo <wesleyc@potterhandy.com>; Tanpreet Pannu <tanpreetp@potterhandy.com>; Jennifer McAllister <jenniferm@potterhandy.com>;
Desiree Mercader <desireem@potterhandy.com>
Subject: Re: Arroyo v. APM

Okay, I am in court tomorrow all day (Santa Ana in the morning and downtown Los Angeles in the afternoon) so how about Wednesday after 10 am or Thursday anytime after 10 am or Friday anytime after 10 am?

On Mon, Aug 20, 2018 at 10:54 AM, Elliott Montgomery <elliottm@potterhandy.com> wrote:

Ms. Shapiro,

Unfortunately, I'm not going to be available this morning as my computer is broken and I'm told it won't be repaired until between 12-2.

If it's repaired by 1 I'm happy to give you a call then, but otherwise it'll have to be later this afternoon or some other day this week.

Thanks,

Elliott Montgomery

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From: Lara Shapiro <shapiro.lara@gmail.com>
Sent: Monday, August 20, 2018 10:39:46 AM
To: Elliott Montgomery
Cc: Wesley Cwiklo; Tanpreet Pannu; Jennifer McAllister; Desiree Mercader
Subject: Re: Arroyo v. APM

Elliott,

I am sorry, and I am not trying to be difficult, but my appointment (for a difficult and sensitive issue) has been continued from 10 am today to 2:30 pm.

Can we speak between 11:30 and 1:30?

Lara

On Mon, Aug 20, 2018 at 9:50 AM, Elliott Montgomery <elliottm@potterhandy.com> wrote:

Ms. Shapiro,

Yes, 2:30 today is fine. I'll look for your call then.

Thanks,

Elliott Montgomery

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From: Lara Shapiro <shapiro.lara@gmail.com>
Sent: Saturday, August 18, 2018 12:18:48 PM
To: Elliott Montgomery
Cc: Wesley Cwiklo; Tanpreet Pannu; Jennifer McAllister; Desiree Mercader
Subject: Re: Arroyo v. APM

Hi Elliott,

Thank you. I would like to discuss with you.

Would Monday at 2:30 pm work?

Lara

On Fri, Aug 17, 2018, 5:50 PM Elliott Montgomery <elliottm@potterhandy.com> wrote:

Ms. Shapiro,

I apologize for not responding sooner.

Generally speaking, I do not provide the reports of Plaintiff's expert until the time set for their disclosure either by the Court or the Federal Rules. Per the Court's December 21, 2017, Scheduling Order in Arroyo v. APM, the date for Initial Expert Disclosures is September 14, 2018. Similarly, the deadline to exchange expert reports in Langer v. T C Investment isn't until November 5, 2018.

Although Plaintiff is not required to provide his Expert's reports before those dates, I am happy to meet and confer with you further regarding the report to discuss early disclosure for the purpose of encouraging settlement in these matters.

I will be available to discuss on the phone anytime next Monday, and if that doesn't work I can find other time later in the week.

Thanks,

Elliott Montgomery

Attorney

--
Lara Shapiro, Attorney At Law
4344 Promenade # 207
Marina del Rey, CA 90292
Tel: (310) 577-0870

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2 attachments



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PROOF OF SERVICE

**ARROYO V. APM INVESTMENTS, LLC
2:17-cv-03922-AB-FFM**

I, LARA SHAPIRO, am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and am not a party to the within action. My business address is 4344 Promenade Way, Unit 207, Marina del Rey, CA 90292.

On September 17, 2018, I served the foregoing document(s) described as **DEFENDANT APM INVESTMENTS, LLC'S OBJECTION TO THE MOTION FOR SUMMARY JUDGMENT AND DECLARATION OF LARA SHAPIRO** on the interested parties in this action by placing a true and correct copy thereof in a sealed envelope addressed as follows:

Gene H. Shioda & James A. Kim
LAW OFFICE OF GENE H. SHIODA
5757 West Century Blvd., Suite 700
Los Angeles, CA 90045
Email: lawofficeofghs@yahoo.com

Phyl Grace, Esq.
CENTER FOR DISABILITY ACCESS
PO Box 262490
San Diego, CA 92196
E-mail: sarag@potterhandy.com
E-mail: phylg@potterhandy.com

BY ECF NOTIFICATION: I filed this document electronically with PACER/ECF and stated parties received notification by e-mail from the ECF filing system.

Executed on September 17, 2018, at Marina del Rey, CA.

STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Lara Shapiro

LARA SHAPIRO